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**BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	DOCKET FILE COPY ORIGINAL
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Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended)	WT Docket No. 99-87
)	
)	
Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies)	RM-9322
)	
)	
Establishment of Public Safety Radio Pool in the Private Mobile Frequencies Below 800 MHz)	RM-9405
)	
)	
Petition for Rule Making of the American Mobile Telecommunications Association)	RM-9705
)	

COMMENTS FOR CINERGY CORPORATION

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COMMENTS FOR CINERGY CORPORATION

Pursuant to FCC Rule 1.415, 47 C.F.R. § 1.415, Cinergy Corporation (Cinergy), by and through its undersigned telecommunications counsel, hereby files comments in the above referenced proceeding concerning the Federal Communications Commission's (FCC or Commission) Further Notice of Proposed Rulemaking (FNPRM).¹

The FCC has commenced a rulemaking proceeding to determine whether to require Part 90 licensees to migrate to narrowband technology. As detailed more fully below, establishing

¹ In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz, Petition for Rule Making of the American Mobile Telecommunications Association, WT Docket No. 99-87, RM-9332, RM 9405, RM-9705, Report and Order and Further Notice of Proposed Rulemaking, (Released November 20, 2000).

mandatory narrowbanding in the 800 MHz band would jeopardize vital telecommunications functions of Cinergy and would constitute an extraordinary and unwarranted hardship for all similarly situated licensees. Cinergy therefore strongly urges the FCC not to implement rules that mandate the migration to narrowband technology in the 800 MHz band.

I. Statement of Interest

Cinergy is one of the largest diversified energy companies in the United States and is the parent company of Cincinnati Gas & Electric Company (CGE) in Ohio and PSI Energy, Inc. (PSI Energy) in Indiana. Together, these operating companies serve 1.4 million electric and 455,000 gas customers in Ohio, Indiana and Kentucky. To facilitate its internal communications and monitoring of its power generation and distribution system, Cinergy operates extensive private land mobile and microwave communications systems. On the land mobile side, CGE operates facilities authorized under call signs in the 150-174 MHz 450-470 MHz, and 800 MHz bands. PSI Energy operates facilities authorized under call signs in the 150-174 MHz, 450-470 MHz and 800 MHz bands. These mobile communications systems support Cinergy's utility operations. Finally, both PSI Energy and CGE have approximately 89 private operational fixed microwave licenses.

Cinergy emphasizes that Cinergy and other power utilities provide the core resource -- electricity -- that permits modern society to function. Absent electric power, other industrial and business operations simply cannot be performed. For the population as a whole, utilities have responsibility for providing electric power to hospitals and other critical facilities throughout their service territories, while simultaneously ensuring the safety of their crews working on distribution lines. While safety is a concern for all Part 90 eligibles, power utilities and other critical infrastructure industries such as the petroleum pipeline industry and the railroad industry

have demonstrably more crucial requirements for reliable, interference-free communications in order to serve the population at large, as well as safeguard the lives of their employees.

For the benefit of both customers and employees, Cinergy must conduct operations in an exceptionally safe and efficient manner, requiring them to maintain highly reliable communications systems. To address their land mobile radio communications needs Cinergy has implemented a wide-area, 800 MHz land mobile radio system. Cinergy recognizes that their ability to maintain viable 800 MHz systems and to meet both internal and customer service demands could be seriously compromised by the imposition of mandatory narrowbanding upon the 800 MHz band.

II. Discussion

On June 19, 1998, the American Mobile Telecommunication Association (AMTA) filed a Petition for Rulemaking asking the FCC to adopt specific deadlines by which non Public-Safety licensees of Part 90 frequencies between 222 MHz and 896 MHz must migrate to 12.5 kHz narrowbanded technology or have their operations subject to secondary status.² In response to AMTA's Petition for Rulemaking, Cinergy filed comments stating that required migration to narrowband channels would cause an extraordinary disruption and expense for Cinergy and other licensees that have invested in systems in reliance upon the existing channelization.³ In this FNPRM, the FCC has requested comments on whether mandating the migration to narrowband

² American Mobile Telecommunication Association Petition for Rulemaking (RM-9332) (filed June 19, 1998) (AMTA Petition).

³ Atlantic City Electric Company, Cinergy Corp., Delmarva Power & Light Company, Entergy Services, Inc, Indianapolis Power & Light Company Statement in Opposition to AMTA Petition for Rulemaking, (RM-9332) (filed August 31, 1998).

technology by a certain date will pose unreasonable burdens on licensees and the timetable for implementing any changes. As set forth more fully below, Cinergy continues to believe that mandatory migration to narrowband operations is inappropriate above 800 MHz and therefore urges the FCC not to take any action in this regard.

A. Mandating the Migration to Narrowband Technologies by Certain Dates Will Impose Unreasonable Burdens on Licensees.

Due to the vital importance of reliable communications when dealing with high-voltage electrical power, Cinergy has licensed, built and maintained their own highly reliable wireless system at considerable expense. This is necessary because Cinergy's communication needs, like other utilities, are unique, demanding a performance standard that common carrier providers cannot typically justify providing on their own systems. While the systems are absolutely necessary, Cinergy is obligated to their ratepayers to be extremely deliberate and circumspect in implementing them. Accordingly, the systems are budgeted and planned years in advance and designed for the maximum possible useful life, typically fifteen years or more. In short, Cinergy has invested extraordinary resources, funds and time in their system, reasonably anticipating that their investment will have lasting benefits.

Mandated migration to narrowbanded channels would require drastic, wholesale reconfigurations of their existing system. At a minimum, Cinergy would be required to replace their mobile and portable units completely. Cinergy's wide-area communication system has thousands of mobile and portable units that cost several thousand dollars per unit. Accordingly, mandated migration to narrowband channels would require Cinergy to spend millions of dollars to address the changeout of the mobile and portable units. Additionally, migration will require

Cinergy to replace its existing fixed stations as well. Even where some of Cinergy's equipment is suited to reprogramming, the cost of doing so could easily run into the multi-million dollar range. Assuming that this were economically feasible at all, the transition would constitute an extraordinary expense and result in unnecessary, premature and wasteful obsolescence of equipment that is being paid for by utility ratepayers.

B. If the FCC decides to Mandate the Migration to Narrowband Technologies by Certain Dates, the FCC Must Take Into Account the Life Span of a Communication System.

If the FCC decides to mandate the migration to narrowband technologies by a certain date, the FCC must take into account the extended life spans of wide-area communications systems, typically 15 years or more. Otherwise, the implementation of narrowband technologies could have a devastating impact. Cinergy is particularly concerned that a mandatory deadline will be imposed in some areas within a short period of time, as is proposed in the AMTA petition.⁴ This would be a tremendous hardship and Cinergy would be required to spend millions of dollars to comply with any deadline that occurred in advance of the expiration of its system's useful life.

C. If the FCC decides to Mandate Narrowband Operations by Certain Dates, the FCC must Ensure that Service is not Disrupted.

As the FCC is well aware, land mobile communications serve several important functions for utilities. Wireless communications permit utilities to perform routine inspections and

maintenance in a highly effective and efficient fashion, helping to maintain the integrity of the power grid and reducing the possibility of disruptions to service or system failures. During times of severe weather, natural disasters, or heavy customer demand, land mobile communications are truly indispensable to utilities. Cinergy's land mobile system facilitates the rapid deployment of personnel to the locations at which they are most needed. The system permits a high level of reliability in communications, often in near-chaotic circumstances, thus ensuring that the safety of life, and property are maximized while power is restored.

Indeed, Congress has recognized the importance of utilities and has expressed a policy of supporting the special needs of utilities in their attempts to meet legitimate telecommunications requirements:

In managing spectrum, the FCC . . . first should attempt to meet the requirements of those radio users which render important services to large groups of the American public, such as governmental entities and utilities, rather than the requirements of those users which would render benefits to relatively small groups.⁵

Cinergy is concerned that its communication system could be compromised while Cinergy is switching to narrowband technology. If its communication system is compromised it will not be able to provide power and service to its customers in a reliable, safe and efficient fashion. When a power outage occurs, Cinergy sends out repair crews who use Cinergy's communication system to discuss the extent of the damage and how to best repair the system. Accordingly, Cinergy's communication system is first and foremost a lifeline to employees in the field working to minimize the effects of electrical outages on the public. Response time to service disruptions will increase without an effective communication system. The FCC must ensure that the communication system will not be detrimentally affected by any new regulations.

⁴ AMTA Petition at ¶ 11.

⁵ S. Rep. No. 191, 97th Cong., 2d Sess. (1982), reprinted in 1982 U.S.C.C.A.N. 2237, 2250.

Cinergy also submits that exclusive use in the 800 MHz band raises heightened issues not associated with shared spectrum below 800 MHz. Cinergy and other utilities use the 800 MHz band for their most sensitive communications, such as communications concerning service disruptions. Any disruption to service in the 800 MHz band could have a devastating impact. The FCC has historically recognized the importance of the 800 MHz band, excluding the spectrum above the 800 MHz band from the refarming proceeding.⁶ Cinergy submits that the FCC should maintain this policy and refrain from instituting changes.

III. Conclusion


If adopted by the FCC, mandated migration to narrowbanded channels would cause extraordinary disruption and expense for Cinergy and other 800 MHz licensees that have invested in systems in reliance upon the existing channelization. Cinergy submits that, when the above impact is weighed against any perceived benefit that the proposal might bring, the FCC will decide not to mandate the migration to narrowband technology.

⁶ In the Matter of Implementation of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services, PR Docket No. 92-235, Second Report and Order, 12 FCC Rcd 14307 (1997).

WHEREFORE, THE PREMISES CONSIDERED, Cinergy urges the Commission to consider these Comments and to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Paul E. Malmud, do hereby certify that on this 5th day of March 2001, a copy of the foregoing "Comments for Cinergy Corporation" was hand-delivered to each of the following:

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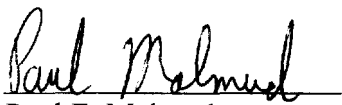
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